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10/693,194	10/23/2003	Carrie Delcomyn	ARE0004PA	2306

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/693,194
Filing Date: October 23, 2003
Appellant(s): DELCOMYN ET AL.

Monika J. Hussell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 9, 2007 appealing from the Office action mailed February 1, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is essentially correct. The cited reference is US 2001/0008879, rather than US Application 09/355,154.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8, 10, 12-14, 21-23, 25-27, 34-36 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willey, US 2001/0008879 A1. The reference discloses photobleaching compositions comprising phthalocyanines (abstract). The compositions may further comprise about 0.1-10% of inorganic salts such as sodium chloride [0303] and peroxygen bleaches such as percarbonates and perborates [0316]. Bleaching agents are typically present at about 1-30% [0313]. The compositions are adjusted to a pH of about 7-13 with buffers, such as carbonate or bicarbonate [0328]. Specific amounts of buffer are not disclosed, but determination of the buffering-effective amount of a disclosed buffer would amount to an ordinary expedient. Suitable surfactants are disclosed at [0305]+, and cosolvents at [0294]. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a bleaching composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim,* 541 F.2d 257,

191 USPQ 90 (CCPA 1976); *In re Woodruff,* 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

(10) Response to Argument

The single point of contention between the appellant and the examiner is whether or not the reference makes obvious the use of hypohalite bleaches or, by extension, the use of an oxygen bleach in combination with a halide source. The examiner notes that where oxygen bleaches, such as those recited by applicant, and a halide source, such as sodium chloride, are both present in a solution, a hypohalite such as sodium hypochlorite (conventional chlorine bleach) can be generated *in situ*. This is well known in the art. Appellant argues that the Willey reference teaches away from the inclusion of hypohalite bleach by excluding it from a definition of suitable bleaching agents [0314], and by teaching that his compositions are intended as an alternative to conventional bleaches such as hypochlorite [0277]. Based on the aforementioned teachings, applicants apparently infer that it would not be obvious, based on the teachings of Willey, to make a composition in which peroxygen bleach and a halide source, such as sodium chloride, are both present. This is not persuasive because the passage relied upon by appellants, [0314], does not specifically exclude hypochlorite bleach. In fact, the first sentence of the paragraph teaches that *any* bleaching agent useful for cleaning purposes can be used, and the second sentence, non-specifically, teaches the use of oxygen bleaches. Furthermore, if the passage at [0277] is to be read as prohibiting the presence of conventional bleaches, why does Willey specifically teach at [0314] that conventional bleaches such as oxygen bleaches may be added? At [0327], the

reference again teaches that bleaches other than oxygen bleaches may be used, although chlorine bleaches are not specifically mentioned. Willey further teaches that "substances which increase the action can also be added in the process according to the invention". Sodium chloride is among those listed as especially preferred [0303]. While this passage does not explicitly state what action is being increased, the entire thrust of the reference as a whole is the formulation of bleaching compositions. Thus, it would be obvious to increase the bleaching action of the compositions of Willey by adding sodium chloride. Appellant argues that sodium chloride is not present in the list of bleach activators taught in the reference, so it is not intended to increase the bleaching action. This is not persuasive because a "bleach activator" is a compound which reacts with oxygen bleaches to generate an active *peroxyacid* bleaching species, not a hypohalite. This is an art accepted definition, which Willey provides at [0319]. Note also Examples 10 and 11, which contain an oxygen bleach, sodium perborate, in combination with a different chloride source, alkyl dimethyl ammonium chloride. This chloride is not bonded to the ammonium group. It is as free to react with perborate, generating hypochlorite, as would be the chloride in sodium chloride. If the presence of free chloride were as antithetical to the invention of Willey as appellant argues, Willey would have used a different ammonium compound, or none at all.

Finally, generation of hypohalite is only recited in claim 21, which appellant has not argued separately.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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1751

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